

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re:

Civil Action No. 1:04-cv-00148-GMS

INACOM CORPORATION, *et al.*,

Debtors.

INACOM CORPORATION,

Plaintiff,

Bankr. Case No. 00-02426 (PJW)
Adv. Pro. No. 02-03496 (PJW)

v.

TECH DATA CORPORATION,

Third-Party Plaintiff,

vs.

COMPAQ COMPUTER CORP., ITY
CORP., and CUSTOM EDGE, INC.,

Third-Party Defendants.

**TECH DATA CORPORATION'S JOINDER IN REQUEST FOR TRIAL
BY JURY BY DEFENDANTS LEXMARK, DELL AND INGRAM**

Defendant and Third Party Plaintiff Tech Data Corporation files this Joinder in Request for Jury Trial. In support hereof, Tech Data respectfully shows the Court as follows.

I. Background

1. On February 9, 2005, in that action styled *Inacom Corp. v. Lexmark International, Inc.*, Civil Action No. 04-CV-583 (GMS), Lexmark International, Inc. ("Lexmark") filed its Motion for the Court to Order a Trial By Jury ("Lexmark's Jury Trial Motion") and its Opening Memorandum in Support of Lexmark's Motion for the

Court to Order A Trial By Jury ("Lexmark's Jury Trial Opening Memorandum"). As set forth in Lexmark's Jury Trial Motion and Lexmark's Jury Trial Opening Memorandum, Lexmark is entitled to a jury trial on Plaintiff's claims asserted against Lexmark and on Lexmark's third-party claims asserted against Compaq.

2. On May 10, 2005, Lexmark; Dell; Tech Data and Ingram Entertainment, Inc. filed their Joint Motion for the Court to Consolidate for Trial ("Joint Motion to Consolidate") and Opening Memorandum in Support of Joint Motion for the Court to Consolidate for Trial ("Joint Motion to Consolidate Opening Memorandum"), seeking that the Court consolidate for trial the following actions currently pending before this Court: (i) Case No. 04-148; *Inacom Corp. v. Tech Data Corp.*; (ii) Case No. 04-583; *Inacom Corp. v. Lexmark International, Inc.*; (iii) Case No. 04-1593; *Inacom Corp. v. Ingram Entertainment Inc.*; and (iv) Case No. 04-582; *Inacom Corp. v. Dell Computer Corp.*

II. Tech Data's Request for Jury Trial

3. Tech Data has submitted a proof of claim in the Inacom bankruptcy cases, and therefore cannot claim a right to trial by jury for Inacom's preference case. However, Tech Data does have a right to seek a jury trial for its third party complaint against third party defendant Hewlett Packard, and now moves the Court in exercise of this right.

4. Defendants Dell and Lexmark have moved the Court for a jury trial, as set forth in Dell's and Lexmark's respective Jury Trial Motions.

5. As set forth in detail in the respective defendants' Joint Motion to Consolidate Opening Memorandum, where two or more cases are consolidated and one is

accompanied by a right to a jury trial, the Court may properly grant a jury trial in both cases. *Cedars-Sinai Med. Ctr. v. Revlon, Inc.* 111 F.R.D. 24, 32 (D. Del. 1986). To the extent Dell's and Lexmark's Jury Trial Motions are granted and the cases are consolidated, Tech Data should be entitled to a jury trial as to Plaintiff's claims against Tech Data for this additional reason.

6. In support of Tech Data's Request for Jury Trial, Tech Data expressly adopts and incorporates by reference (i) Lexmark's Motion for Jury Trial, (ii) Lexmark's Jury Trial Opening Memorandum, (iii) the Joint Motion to Consolidate, and (iv) the Joint Motion to Consolidate Opening Memorandum. Tech Data relies on the foregoing motions and briefs and this motion in support of Tech Data's Motion for Jury Trial, and waives, pursuant to Local Rule 7.1.2, its right to file an opening brief in support hereof. Tech Data, however, expressly reserves its right to file a reply brief to respond to any and all arguments that Plaintiff may assert in response hereto.

WHEREFORE, for all of the foregoing reasons, Tech Data prays that this Court grant this Request for Jury Trial and grant to Tech Data such other and further relief to which it is justly entitled.

Dated: July 15, 2005

Respectfully submitted,

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